IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1615 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAVIBHAI MARUTIBHAI GAEKWAD THRO' WIFE REKHABEN RAVIBHAI
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 1615 of 2001
MS SUBHADRA G PATEL for Petitioner No. 1
MS BINODA GAJJAR AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 11/09/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under section 3 (2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Ahmedabad City, Ahmedabad, vide order dated February 9, 2001, Annexure A to the petition, detained the petitioner

- detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority considered the petitioner as a bootlegger within the meaning of Section 2 (b) of the Act and as one case under the Bombay Prohibition Act which is pending and statements of two witnesses were recorded against the detenu, according to the detaining authority, the activities of the detenu are prejudicial to the maintenance of public order and, therefore, powers under Section 9 (2) of the Act are exercised by the detaining authority.

3. By filing this petition under Article 226 of the Constitution, petitioner - detenu has assailed the order of detention on various grounds and prayed to issue an appropriate writ, order or direction quashing and setting aside the order of detention and prayed to set him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms. Subhadraben Patel, learned advocate for the petitioner has restricted her arguments to the point that the subjective satisfaction recorded by the detaining authority for exercising powers under Section 9 (2) of the Act cannot be considered as genuine. In order to bring home her submission, reliance is placed on the statements of two witnesses which are recorded on February 7, 2001 and verified by the detaining authority on February 8, 2001 and on the next day, that is, on February 9, 2001 the order of detention is passed and, therefore, it can be said that the detaining authority has not exercised the powers under Section 9 (2) of the Act properly as he had no sufficient time to examine the statements of the witnesses.

5. Ms. Gajjar, learned A.G.P. has opposed this petition by filing reply affidavit sworn by Mr. P.C. Pande, Commissioner of Police, Ahmedabad City, Ahmedabad. She, however, does not dispute the factual aspect that the statements which are recorded on February 7, 2001 are verified on February 8, 2001 and immediately on the next day, that is, on February 9, 2001, the order of detention was passed. She, therefore, contended that the activities of the petitioner were prejudicial to the maintenance of public order and, therefore, in the interest of public at large, order of detention came to be passed which does not require any interference at the hands of this Court.

6. Similar question arose before a Division bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat, 1993 (2) GLR 1659 where the statements of the witnesses were recorded on 16.10.1992 and order of detention was passed on 17.10.1992 and the Division bench of this Court has observed that the power under section 9 (2) of the Act was improperly exercised and was held to be detrimental to the right of the detenu to make an effective representation contemplated under Article 22 (5) of the Constitution and, therefore, the detention order was quashed. Applying the principles laid down by the Division Bench of this Court in Kalidas's case (supra) to the facts of the present case, it is clear that the present case is identical to the case referred to above. In the present case also, at the cost of repetition, be it stated that statements of two witnesses were recorded on February 7, 2001 and on February 8, 2001 they were verified and immediately on the next day, that is, on February 9, 2001 the order of detention came to be passed. Therefore, the order of detention stands vitiated and the petition deserves to be allowed on this ground alone.

7. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order of detention dated February 9, 2001 passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M. Kapadia, J.)

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